

1 KEVIN J. McINERNEY (46941)
kevin@mcinerneylaw.net

2 KELLY McINERNEY (200017)
kelly@mcinerneylaw.net

3 CHARLES A. JONES (224915)
caj@mcinerneylaw.net

4 McINERNEY & JONES

18124 Wedge Parkway #503

5 Reno, Nevada 89511

6 Tel: 775-849-3811

Fax: 775-849-3866

7 JAMES F. CLAPP (145814)

8 jclapp@sdlaw.com

MARITA MURPHY LAUINGER (199242)

9 mlauinger@sdlaw.com

ZACHARIAH P. DOSTART (255071)

10 zdostart@sdlaw.com

DOSTART CLAPP GORDON & COVENEY, LLP

11 4370 La Jolla Village Drive, Suite 970

San Diego, California 92122-1253

12 Tel: 858-623-4200

13 Fax: 858-623-4299

14 MATTHEW RIGHETTI (121012)

matt@righettilaw.com

15 RIGHETTI GLUGOSKI, P.C.

456 Montgomery Street, Suite 1400

16 San Francisco, California 94104

17 Tel: 415-983-0900

Fax: 415-397-9005

18 Attorneys for Plaintiffs

19 UNITED STATES DISTRICT COURT

20 NORTHERN DISTRICT OF CALIFORNIA

21 SAN FRANCISCO DIVISION

22 LISA GARVEY, individually and on behalf of
23 all others similarly situated,

24 Plaintiff,

25 vs.

26 SEARS HOLDING MANAGEMENT
27 CORPORATION, and DOES 1-50, inclusive,

28 Defendants.

CASE NO. Case No. 11-02575

~~PROPOSED~~ ORDER FOLLOWING
DISCOVERY HEARING

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

On November 22, 2011, the parties appeared at 10:00 a.m. in the above captioned Court pursuant to the Court's Order [Docket #38] for an in-person meet and confer session in the Court's jury room. Following the parties' meet and confer session in the Court's jury room, the parties appeared before the Court at 1:30 p.m. for a discovery hearing. Matthew Righetti appeared for Plaintiff, Lisa Garvey, and Emily Schuman appeared for Defendant, Kmart Corporation. After considering the letter briefs submitted by both parties as well as the arguments of counsel, and for good cause appearing therefore, the **COURT HEREBY ORDERS:**

1) Pursuant to agreement by the parties, the written discovery heretofore propounded by Plaintiff to Defendant (Special Interrogatories, Set One and Request for Production of Documents, Set One) shall be limited in scope to the position of Checkout Service Associate and employees that use a cash register in the perimeter departments, including Electronics, Garden, Layaway, Jewelry, Service Desk, Restaurant and Pharmacy.

2) The Court approves the parties' agreement to use a Belaire procedure (notice to putative class members and opt-out period) for the discovery of the identities and contact information for putative class members. The notice shall be sent to 300 randomly selected Checkout Service Associates. If Defendant does not agree to this procedure, the Court shall Order that the letter be sent to 500 randomly selected Checkout Service Associates.

3) With respect to Defendant's privilege log, the Court finds that Defendant's previously produced privilege log does not comply with the Court's Standing Order. The Court Orders Defendant to supplement its privilege log to identify all documents Defendant contends are privileged that were created prior to the filing of the San Francisco Superior Court case that

1 alleges a violation of Section 14 of Wage Order 7 (seating violations) by noon on December 9,
2 2011. The Court further Orders Defendant to supplement its privilege log pursuant to the
3 Court's Standing Order to properly identify all documents Defendant contends are privileged,
4 that were created up to the filing date of this lawsuit (April 11, 2011), by noon on December 9,
5 2011, unless Defendant submits a declaration sufficient to convince the Court that it would be
6 too burdensome to identify each document and that there is no likelihood of uncovering any non-
7 privileged documents.
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9 4) With respect to Defendant's "rolling" document production and the Rule 30(b)(6)
10 deposition set for December 2, 2011, the Court orders that the deposition will proceed as
11 previously scheduled by the parties for the noticed topics on December 2, 2011. If Defendant
12 has not produced all responsive documents prior to December 2, 2011 and confirmed in writing
13 that it has done so, the Court Orders that Plaintiff will be permitted to take the deposition of
14 Defendant a second time after Defendant has completed its document production, and Defendant
15 shall pay all costs associated with the second deposition.
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17 5) With respect to Special Interrogatory 18 (average amount of time cashiers spend on the
18 cash registers), the Court orders Defendant to confirm in writing by Tuesday, November 29,
19 2011 whether it intends to rely on information contained in Defendant's "point of sale" records
20 to oppose Rule 23 certification. If Defendant confirms in writing that it will rely on said
21 information, Defendant is Ordered to describe in writing how it intends to use said information
22 and explain what Defendant is willing to produce in order to provide Plaintiff the opportunity to
23 address the information prior to filing its Rule 23 motion. If Defendant does not confirm in
24 writing by Tuesday, November 29, 2011 that it intends to use information from its "point of sale"
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1 records and how it intends to do so, then Defendant is barred from using such information
2 thereafter.


3 6) With respect to Special Interrogatories five and six, Defendant is ordered to provide
4 supplemental responses by Tuesday, December 6, 2011.
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6 7) With respect to Interrogatories nine through fourteen, Defendant is ordered to supplement
7 its responses with the requested information, in so far as it applies to formal requests for a seat
8 by Tuesday, December 6, 2011.

9 8) Defendant is ordered to confirm in writing by noon on Tuesday, November 29, 2011
10 whether it represents formerly employed Kmart Store Managers.
11

12 9) With respect to Requests for Production of Documents fourteen, fifteen, twenty-three and
13 twenty-four, Defendant is ordered to supplement its responses by December 6, 2011, subject to
14 the Court's Order above regarding the production of point of sale information (see number 5
15 above).
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18 Dated: November 29, 2011.
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Hon. William H. Alsup
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